



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

Town Hall
135 School Street
Room 212
Walpole, MA 02081
508-660-7250

DECISION – BOARD OF APPEALS CASE NO. 22-19

APPLICANT

Optima Hospitality Group, LLC

LOCATION OF PROPERTY INVOLVED:

**990 Boston Providence Highway, Walpole, MA
Walpole Assessors Map 36, Parcels 82 & 83**

APPLICATION:

A SPECIAL PERMIT under Section 9-3-A and 9-3-C of the Zoning Bylaw to allow alteration, expansion or extension of nonconforming parking within the setback, as shown on the plan entitled: "Site Plan, #990 Boston Providence Highway, Walpole/Sharon, Massachusetts" consisting of 10 Sheets dated July 1, 2019 drawn by Norwood Engineering Company, Inc., 1410 Route One, Norwood, MA 02062, as may be amended.

and

A VARIANCE from Section 6 (Dimensional Regulations): Table 6-B-1 (Table of Dimensional Regulations) of the Zoning Bylaw to allow a maximum building height of no more than sixty-five feet (65') in Five (5) stories where Forty-Five feet (45') and Four (4) stories are allowed all as shown on the plan entitled: "Site Plan, #990 Boston Providence Highway, Walpole/Sharon, Massachusetts" consisting of 10 Sheets dated July 1, 2019 drawn by Norwood Engineering Company, Inc., 1410 Route One, Norwood, MA 02062, as may be amended.

On October 16, 2019, December 4, 2019, and February 5, 2019 a Public Hearing was held, in the Main Meeting Room of Town Hall, for the purpose of receiving information and voting upon a decision as to granting of the Special Permit requested. The members who were present and voting:

John Lee, Chair
Susanne Murphy, Vice Chair
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Rick Merrikin, Member

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Petitioner, Optima Hospitality Group, LLC, applied to the Zoning Board of Appeals to construct a hotel with five stories and 116 hotel rooms.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Walpole and fixed October 16, 2019 at 7:00 PM., in the Main Meeting Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioners, to their attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on September 25, 2019 and October 2, 2019 in the Times Advocate, a newspaper published in Walpole. A copy of said notice is as follows:

Notice of Hearing

Town of Walpole Zoning Board of Appeals

Notice is hereby given that the Board of Appeals of the Town of Walpole will hold a **PUBLIC HEARING** in the **MAIN MEETING ROOM** of **WALPOLE TOWN HALL** on **WEDNESDAY, October 16, 2019 at 7:00 P.M.** on an Application from **Optima Hospitality Group, Case #22-19**, with respect to property located at **990 Boston Providence Highway, Walpole, MA/ Sharon MA**, Zoning District HBD (Walpole); Zoning District Light Industrial (Sharon).

This Application is for a Special Permit under Section 9-3.A and 9-3.C of the Zoning Bylaws to allow alteration, expansion or extension of non-conforming parking within the setback, as may be amended.

This Application is for a Variance under Section 6 (Dimensional Regulations): Table 6-B-1 (Table of Dimensional Regulations) of the Zoning Bylaw to allow a maximum building height of no more than Sixty-Five feet (65') in Five (5) stories where Forty-Five feet (45') and Four (4) stories are allowed, as may be amended.

Robert Fitzgerald, Clerk

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman John Lee and Board Members Robert Fitzgerald, Susanne Murphy, Rick Merrikin, Mary Jane Coffey and Associate Member Drew Delaney. Also present at the hearing was Zoning Board Secretary, Amy Messier.

First Night of Public Hearing, October 16, 2019

The case was presented by Phil Macchi, Macchi & Macchi, LLC, 1256 Washington Street, Norwood, Massachusetts, the Petitioner's Attorney. Also in attendance were the Petitioner, David Wluka, and the project's engineer, Dave Johnson, Norwood Engineering, 1410 Route One, Norwood, MA 02062

Chairman Lee called the hearing to order at approximately 8:00 p.m. and read the notice of hearing into the record.

Chairman Lee read the department comments submitted into the record. He noted that the Conservation Commission issued an order of conditions and have no further comments; the Board of Health unanimously voted that they have no specific comments; Deputy Fire Chief Paul Barry requested an updated turn analysis utilizing the plans. Mr. Barry further noted in his letter to the ZBA, that the build out of the proposal must comply with comprehensive fire safety code.

Attorney Macchi then described the proposal and described the lot as split lot with half in the Town of Sharon and half in the Town of Walpole. Mr. Macchi noted

that some version of this project has been in the works going on 15 years and that the previous attempts at development have not come to fruition for a variety of reasons.

Mr. Macchi stated that Sharon and Walpole through their respective Board of Selectmen, entered into an intermunicipal agreement that stipulates that the Walpole Fire Department will respond to calls, and so as a result of that a constraint is that 55% of the building will be in Walpole. He stated that is at the request of the Walpole fire department for public safety reasons so there would be no confusion over who would respond. Mr. Macchi noted that this was an intermunicipal agreement to which the developer was not included in. Additionally, Mr. Macchi described agreements between the Developer and the Town of Sharon as well as an agreement between the Developer and the Town of Walpole. Mr. Macchi described that each agreement hinges on 55% of the proposed building be located on the Walpole Town side. He stated that the Applicant and the Walpole Water Commission also have an agreement. Mr. Macchi stated that the Town of Sharon does not have sewer and it does not make sense to put a well in for one half of a building. Mr. Macchi stated that the Applicant has agreed to everything the town has requested such as fees, and fee rates.

Attorney Macchi then described the uniqueness of the lot and noted that the background of the parcel is important because it demonstrates the difficult to develop on it, which contributes to its uniqueness. Mr. Macchi then described the request for a special permit to alter a nonconforming parking area. Relying upon a site plan, Mr. Macchi identified the parking lot and explained the nonconforming parking area and described the removal of an existing curb cut and realignment of the parking spaces. He stated that they are not increasing the nonconformity and a special permit can be

granted. Mr. Macchi then reviewed the criteria for the alternation of nonconforming parking area.

Mr. Macchi then described the alterations to the parking area. He stated that the proposal would remove an existing curb cut and to realign the parking. Mr. Macchi argued that these changes would be in harmony with the surrounding area. As far as vehicular and pedestrian traffic, Mr. Macchi stated, realigning in itself is not going to generate additional trips, however, he noted that the hotel will add trips. Mr. Macchi summarized the traffic impact analysis, noting that while the number of trips is expected to increase, service is not anticipated to be impacted from the addition of the hotel use. He added that the traffic impact analysis finds that closing off the curb cut is going to make internal and external traffic movements safer.

Board Member Murphy stated that closing off the driveway would be great since cars can cut across. Mr. Dave Johnson stated that the existing entrance and exit at High Plain is also being modified to right-turn only. He stated that this would require traffic to come out and use other means of egress. Board Member Murphy concurred that this was a safer condition.

Attorney Macchi then continued to review the special permit criteria and noted that the realignment of the parking area is not going to produce noise or vibration and the hotel use is a use that is allowed by right. In regard to parking, Mr. Macchi argued that the proposal shall not be incompatible with the Zoning By-law. He stated that one of the main purposes of the Zoning By-law is to promote public safety and that by modifying the parking lot configuration it will help with traffic flow and safety, even

with the added traffic counts from the new hotel use. He argued that the proposal falls 100% within the intent of the bylaw.

Attorney Macchi then reviewed the criteria for the grant of a variance and described the uniqueness of the lot. He stated that the lot is divided approximately down the middle between the Town of Walpole and the Town of Sharon. Mr. Macchi stated that there are no other properties that share this characteristic in the Highway Business District. Mr. Macchi further described that this property is subject to a variety of municipal agreements that have contributed to the siting of the building and inform the massing and height. In addition, Mr. Macchi noted that the lot is bound by wetlands on one side, a town line in the middle and not allowed by the Sewer and Water agreement and the Board of Selectmen to move the building backwards. Mr. Macchi argued that in order to keep the ratio of 55% of the building in Walpole, the building must be this height. Mr. Macchi stated that the proposal requires a building that is 65 feet. Mr. Wluka stated that the height is necessary to allow for the construction of a fifth floor of the hotel. Mr. Macchi stated that the construction methodology will have the final impact on the height which may be lower.

Mr. Macchi argued that these unique circumstances create a hardship. He stated that there is a hardship that the applicant cannot comply with the agreements between the Town of Sharon and the Town of Walpole without exceeded the height allowed in Walpole. Mr. Macchi then argued that there is no detriment to the public if the building would exceed the maximum allowed height; he further noted the building could be as tall as 80 feet by-right in Sharon.

Upon inquiry from Chairman Lee, Mr. Macchi stated that building an 85-foot-tall building is not a possibility. Mr. Macchi noted that the fire departments for the respective towns are aware of the proposed building height. Chairman Lee stated that this would be the tallest building in the town and voiced a concern that the Zoning Board of Appeals had not received confirmation from the Walpole Fire Department that they do not have an issue with the height. Chairman Lee cautioned the applicant that this fire concern must be addressed.

Board Member Murphy asked for all the agreements for the proposal, including the agreements with the Town of Sharon.

Upon inquiry from Board Member Merrikin, Mr. Macchi stated that the 55% and 45% split between Walpole and Sharon came out of early discussions with the Town Administrator, Jim Johnson. Mr. Wluka added that the Water and Sewer Commission stated that if Walpole is to provide water to this project, there must be a benefit to the town, which is how 55% was arrived at. Mr. Wluka further added that there are agreements that allow half the room taxes from the Sharon side to be paid to the Town of Walpole.

Chairman Lee stated that the Board needs to know if the Fire Department can defend this building; the question is really if there's anything flammable at that height.

Mr. Macchi stated that all safety issues need to be met and the proposal will meet whatever the Fire Department requires. Mr. Macchi further described the proposal is in the Highway Business District and that one of the allowed uses is a hotel. Mr. Macchi argued that this proposal would be in harmony with the purposes of the

Highway Business District. Mr. Macchi concluded stating that should the Board grant of a variance would be within the intent and purpose of the Zoning Bylaw.

The Board discussed what is driving the height of the building. Upon inquiry from Chairman Lee, Mr. Wluka stated that the height is driven by the requirement to put 55% of the building in Walpole. Mr. Lee stated that if the building size is lowered, the proposal can still meet that ratio. Mr. Wluka stated that by reducing the number of units it creates an economic hardship. Chairman Lee stated that that was an economic hardship, and not a zoning hardship. Mr. Lee further stated that the hardship is not created by the geography of the lot and a small building would require less fire and less police. Mr. Macchi stated that a hardship can be financial or otherwise and argued that losing a floor would be a financial hardship that would make the economic viability of the project fail.

Chairman Lee stated that the variance standard is very high and inquired who is in charge of the enforcement. Mr. Macchi explained that the Town of Walpole is the lead enforcement agent with the Town of Sharon as an advisory partner. Board Member Murphy stated that the Town of Walpole is taking a huge financial burden with this project. Chairman Lee voiced a concern about the project being done correct and it needs to be clarified who is going to be doing the zoning enforcement and that this project doesn't fall into a "no man's land".

Second Night of Public Hearing, December 4, 2020

Present at the continued hearing were Chairman John Lee and Board Members Robert Fitzgerald, Susanne Murphy, Rick Merrikin, Mary Jane Coffey and Associate Member Drew Delaney. Also present at the hearing was Zoning Board Secretary, Amy Messier.

Attorney Macchi provided the Board with a letter from the Building Commissioner and provided the board with copies of the agreements. Mr. Macchi reviewed the questions that were raised at the previous hearing. He stated that they met with the Fire Chief and the Deputy Fire Chief about the height of the building and the parapet. Mr. Macchi stated that they looked at the plan and were comfortable with the proposed 72 feet, which includes a parapet.

Upon inquiry from Board Member Murphy, Mr. Macchi confirmed that the Town of Walpole has a 100-foot ladder truck that could adequately serve the proposed height. He noted that the Town of Sharon has similar capacities. Mr. Macchi provided written confirmation to the Board of his testimony.

Mr. Macchi then described the enforcement of the proposal. He relied upon a letter provided by the Building Commissioner, Mike Yanovitch. Mr. Macchi stated that with regards to building permits, the town of Walpole's Building Department is the issuing authority and will be responsible to conduct the inspections. He further noted that the Walpole Building Department will also issue violations of any building code issues. The Board then discussed why Walpole wanted to have control over the permitted process and oversight.

Attorney Macchi then described the uniqueness of the lot and how it contributes to the economic hardship noting the following: (1) there is not another 50/50 Town of

Walpole and Town of Sharon split; (2) due to the configuration of the wetlands on the lot and where I-95 bisects pushes the building to be perpendicular, rather than fitting the building on one side, without making it uneconomic; and (3) the threshold for any national chain to put in a hotel is approximately 110 rooms and the current proposal is for 116 rooms, with the top floor containing 28 of the rooms. Chairman Lee inquired what the uneconomic component has to do with the variance request. Mr. Macchi stated that the first variance criteria relates to if the enforcement of the zoning bylaw will create a hardship, a significant hardship economic or otherwise. Chairman Lee clarified that Mr. Macchi was arguing that the scale of the building contributes to the economic hardship. Mr. Macchi posited that an 80-room hotel would not be economically feasible on this site.

Board Member Fitzgerald stated that it would be a liberal interpretation of what a variance is for if an argument is constructed based on narrowing a development to a use that is uneconomic to build on a site when an alternative use may not be. Attorney Macchi stated that perhaps he would agree if this were the first proposal that was attempted. He noted that this site has been under different proposals and ideas for the last thirteen years. Mr. Macchi stated that he is aware of five different proposals that vary in building composition and use. Mr. Macchi stated that among the failed proposals included a bank and a CVS.

Chairman Lee stated that he is concerned about granting a height variance and is concerned about the traffic flow and safety. Chairman Lee stated that the Fairfield Hotel was able to build nearby without requesting a height variance. Therefore, he stated, there that a height variance is not necessary, and the Applicant should figure out how to

make the project work another way. Board Member Coffey concurred that the height was too tall on Route 1.

Chairman Lee shared that he is concerned that with this proposal there will be even more traffic. He further noted that the design does not provide much of an improvement and he has concerns about its impact.

Third Night of Public Hearing, February 5, 2020

Present at the continued hearing were Chairman John Lee and Board Members Robert Fitzgerald, Susanne Murphy, Rick Merrikin, Mary Jane Coffey and Associate Member Drew Delaney. Also present at the hearing was Zoning Board Secretary, Amy Messier, Community Development Director, Ashley Clark, and Town Counsel, Mark Reich, KP Law.

The case was presented by Phil Macchi, Macchi & Macchi, LLC, 1256 Washington Street, Norwood, Massachusetts, the Petitioner's Attorney. Also in attendance were the Petitioner, David Wluka, Dave Johnson, Norwood Engineering, 1410 Route One, Norwood, MA 02062, and Jason Adams of McMahon Associates, 120 Water Street, 4th Floor, Boston, Massachusetts, 02109.

Mr. Adams described the traffic impact study. He stated that there is an expected additional vehicle approximately every two minutes, slightly higher on the weekend.

Board Member Merrikin suggested that the Applicant include internal signage within the parking lot. Mr. Adams stated that the parking lot has been designed in a safe

and efficient manner and finds that it will fit in well with the existing street network. Upon inquiry from Board Member Fitzgerald, Mr. Adams stated that they are not expecting a lot of noticeable increase in traffic and the right turns out of the driveways will be improved and made safer.

There was a discussion over the distance from the driveway to the turns. Upon inquiry from Chairman Lee, Mr. Adams stated that the project was evaluated under typical road conditions, so there was no special focus was given to impacts from football games taking place at Patriot Stadium. Board Member Fitzgerald inquired about what other safety signage improvements are being proposed. Mr. Adams stated that a left turn existing will be prohibit with appropriate signage and barriers.

Upon inquiry from Board Member Merrikin, Mr. Adams stated that there will be internal signage within the lot to provide safety and a high level of customer service. Mr. Adams stated that a vehicle can take a right and cut across to turn left, however, this movement would be difficult during peak times. He stated the expectation is that Route 1 will take a bulk of the vehicle trips. Upon inquiry from Associate Board Member Delaney, Mr. Adams stated that the traffic light going east has a fair amount of capacity and will not be significantly impacted from this project.

Attorney Macchi then presented his argument for a dimensional variance for height. He noted that access would not be possible through the rear as the lot is bound by I-95. Attorney Macchi stated that the economics play into the equation for hardship. Attorney Macchi stated that case law supports that a hardship looks at the totality of the project such as: how much is the

development is going to cost, what are the other uses in the area, is there too much competition for a particular business.

Upon inquiry from Chairman Lee, Mr. Macchi affirmed that the courts take competition and free enterprise into consideration under their review of variances. Mr. Macchi stated that the court found that requiring the Applicant to build something other than what was proposed was a hardship based on the totality of the circumstances.

There was a discussion relating to when an Applicant is or is not responsible for creating their own hardship. Attorney Macchi argued that in *Wolfman vs. Brookline*¹ case in that instance an individual lot in Brookline was divided between two different zoning districts which then required a lopsided building. He stated that this created a hardship because its increased construction and foundation costs. Mr. Macchi stated that there are about five lots in Walpole that are split and not in Highway Business District. Mr. Macchi stated that conditions of the soil in this case also apply as there are wetlands, a split zone between the towns, and I-95 land locked. He noted that the court has found that the totality of those circumstances can be found as unique circumstances and have found that when you have a split zone with different height requirements that creates a hardship due to increased construction costs.

The Board discussed with Mr. Macchi the possibility to lower the height of the building to 62 feet. Chairman Lee was concerned about the potential of an 85-foot-tall building. The Board discussed the perceived height of a building that is set back 154 feet from the property line versus 50 feet setback. Mr. Macchi argued that should the Board grant a variance, there would be no derogation of the Zoning By-Law and noted that is one of the few lots in town where there are

¹ *Wolfman v. Board of Appeals of Brookline*, 15 Mass. App. Ct. 112 (1983).

no abutters being impacted and no shadow impacts to consider. Mr. Macchi argued that the proposal is in harmony with the Zoning By-Law under the Highway Business District.

Board Member Merrikin inquired about the cost disparity in having a building that was four stories on one side and six stories on the other. Mr. Wluka stated that it would add approximately \$500,000.00 in construction costs.

Upon inquiry from Chairman Lee, Attorney Reich, stated that that variances are at the discretion of the Zoning Board of Appeals. He stated that they reviewed the available variance cases and concurred with Mr. Macchi that it would be preferable to disregard the various town agreements in the analysis of the uniqueness of the lot. Mr. Reich stated that in terms of the split lots, and reviewing the Wolfman case, he does believe that the analysis provided by the Applicant supports the argument made with respect to issues relating to topography, soil conditions and uniqueness of the lot. He noted that the Wolfman case is a significant case and the proposal before the Board is unique in an additional way, given that the site straddles the town boundary. Mr. Reich concluded that all these impacts together would allow the ZBA to make the finding that a variance is warranted.

Chairman Lee stated that the Board is concerned about the height of this building and he noted that it would be one of the largest structures on Route 1. Chairman Lee further stated that it would be larger than the Fairfield Hotel, which was built without a variance. Chief Bailey stated that the construction would be wood podium, which is permitted by the building code. Chief Bailey added that the Fire Department is familiar with this construction type and noted that the building would be fully sprinklered and have full alarm detection. Mr. Bailey further noted that the Fire Department has a 110-foot truck and depending on how the truck was parked, could

adequately serve the height of the proposed building. Chief Bailey concluded by stating that the Fire Department does not anticipate any problems with the proposed height of the building.

The Board then discussed the mutual aid agreements with Chief Bailey. Mr. Bailey stated that the Town of Walpole and the Town of Sharon have met and discussed the proposal and noted that they work together on a regular basis. Chairman Lee inquired if there are other agreements in place where Walpole provides support. Chief Bailey stated that Sharon and Walpole both respond automatically to the Siemens site because of how large of a facility it is. He further noted that there are also agreements with the Town of Westwood.

Chief John Carmichael stated that the Police Department does not have any issues as far as response to the hotel. He noted that they have met with the Sharon Police Department and would jointly respond to any emergency that takes place, similar to how jurisdiction is currently shared. The Board discussed similar split properties and how Sharon and Walpole Police Departments collaborate.

Board Member Coffey stated that Walpole bears the heavy lifting with regard to response to that hotel. Chief Carmichael stated that both municipalities will respond to emergency calls. Board Member Coffey stated that the burden is more on Walpole from a fiscal standpoint and she has difficulty with sharing that burden. Chief Carmichael stated the response would be similar to what the existing conditions are.

Town Administrator, Jim Johnson, stated that the burden on the taxpayers was seriously contemplated with the drafting of the agreements. He noted that it was important to both the fire and police chiefs to be the first responders as they are more ably equipped to address emergency situations. He noted that as part of the negotiation, Walpole will receive 77.5% of the hotel tax.

Chairman Lee inquired about the enforcement of any ZBA decision. Mr. Crowley stated there have been several meetings between Sharon and Walpole and they have agreed to allow Walpole to have full enforcement authority. He noted that Walpole would receive all permit fees associated with the building. Mr. Crowley stated that the Building Department has authority to enforce for the entire building. Upon inquiry from Chairman Lee, Mr. Crowley stated that he has direct experience with cross-town enforcement agreements and noted during his tenure in Brookline, he assisted in the review of a project between Boston and Brookline. Mr. Crowley further stated that that was an eleven-story building, and so concluded that the Building Department is able to also enforce and inspect a building with the height as proposed.

Upon inquiry of Chairman Lee, Mr. Reich stated that with regard to enforcement of the ZBA decision, enforcement across the Townline is established in the intermunicipal agreements. He stated that municipalities can enter into agreements for shared services and the language in the agreement between Walpole and Sharon, delineates those responsibilities to Walpole. Mr. Reich noted that the agreement anticipated this very issue and places that authority and responsibility to the Town of Walpole. He stated this is not an uncommon situation and he has worked with several similar agreements that contemplate how to manage across town boundaries. He stated all these agreements included financial benefits to counteract the impact to the Town of Walpole. Mr. Reich stated that the developer is not party to the intermunicipal agreement.

Ms. Clark stated that she provided a report and noted a lot has been discussed in terms of the economics. She stated that when you review the purposes listed under the general provisions of the Zoning By-Law, not only does the project not derogate from these enumerated purposes, but it promotes them. She noted one of the first listed is to lessen congestion in the streets and

cited expert testimony stating that this proposal will improve traffic conditions. Ms. Clark reviewed the criteria listed in the Zoning By-Law. She noted the economic well-being is included and referenced the fiscal impact analysis and referred to the letter of support of the Economic Development Commission.

Chief Bailey stated that the Fire Department relies heavily on mutual aid. He noted that all the surrounding towns work together. He stated that if the call is made, they will make sure someone will get there. Mr. Reich added that the agreement recognizes the issues being raised and the police and fire chief were integrally involved in that process. Mr. Reich stated in terms of the burdens are addressed in the agreements both financial and in terms of the involvement of the police and fire chiefs. Board Member Murphy inquired about the dates of the agreements. Mr. Reich stated they were executed in 2019.

Mr. Johnson stated that this project reflects a huge collaborative effort on behalf of the Town of Walpole and the Town of Sharon. He noted that part of the agreement includes mitigation, wear and tear and taxes.

The Board having no further questions, voted to close the hearing.

FURTHER FINDINGS – SPECIAL PERMIT

1. Section 2: Administration, 2. Special Permits, A. Finding and Determination required that:

Special Permits may be granted by the Board of Appeals and the Planning Board (the Special Permit Granting Authority or “SPGA”), as provided in this Bylaw, only for uses which are in harmony with the purposes and intent of this Bylaw and which shall be subject to any general or specific rules prescribed herein and to any appropriate conditions, safeguards, and limitations on time and use.

The Board finds that the proposed use is in harmony with the purposes and intent of the By-Law as, in fact, the reconfiguration of access/egress and parking along Route 1 provides a safer traffic

pattern for both the customers of the hotel and restaurant as well as the motorists using Route 1 North and is not more detrimental to the neighborhood. In the parking area that is proposed to be altered there are eight (8) existing parking spots as well as an access/egress point on to Route 1 North. The Applicant is proposing to remove the curb cut and reconfigure the parking to accommodate ten spaces (10), which is an expansion of less than 50%. Accordingly, this criteria of Sections 9-3-A and 9-3-C are satisfied.

2. Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

Prior to granting a Special Permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

- (a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;***

The Board finds that the proposed use is in harmony with the purposes and intent of the By-Law as, in fact, the reconfiguration of access/egress and parking along Route 1 provides a safer traffic pattern for both the customers of the hotel and restaurant as well as the motorists using Route 1 North. In the parking area that is proposed to be altered there are eight (8) existing parking spots as well as an access/egress point on to Route 1 North. The Applicant is proposing to remove the curb cut and reconfigure the parking to accommodate ten spaces (10). This redevelopment will actually decrease traffic flow in that part of the lot and does not have any floor area component. Accordingly, this criterion is satisfied.

- (b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;***

The Board finds that the elimination of the driveway and location of two additional parking spots will not have any adverse impact on the immediate neighborhood. The Applicant submitted a Traffic Impact study dated May 2019 prepared by McMahon Traffic Engineers and Planners with the Application which shows that there will not be any appreciable impact on the traffic areas of the roadways in the area. However, the Study states that the proposed changes to the site access are expected to improve traffic safety in the immediate neighborhood. As such, there is no adverse effect on the immediate neighborhood and this condition is satisfied.

- (c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;***

The Board finds that the requested reconfiguration in non-conforming parking affects less than 5% of the total on-site parking (10 out of 216 spaces) and in and of itself has no residents, employees, customers, or visitors that will adversely affect the immediate neighborhood. Therefore, the Board finds that there is no adverse effect to the neighborhood as a result of the Project.

- (d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;**

The Board finds that the proposed development conforms to all dimensional regulations of the Walpole Zoning By-Law except for building height. The Applicant has petitioned the Zoning Board of Appeals for the applicable height Variance to allow the project to be built as shown on the plans entitled: "Site Plan, #990 Boston Providence Highway, Walpole/Sharon, Massachusetts" consisting of 10 Sheets dated July 1, 2019 drawn by Norwood Engineering Company, Inc., 1410 Route One, Norwood, MA 02062, as may be amended. The Applicant requested relief for the parking stall depth which is addressed separately below.

- (e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;**

The Board finds that allowing the reconfiguration of the parking lot and access/egress points poses no danger to the immediate neighborhood through fire, explosion, emission of wastes, or other causes.

- (f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;**

The Board finds that allowing the reconfiguration of the parking lot and access/egress points will not create any noise, dust, heat, smoke, fumes, odor, glare, nuisance, or serious hazard so as to adversely affect the immediate neighborhood.

- (g) shall not adversely affect the character of the immediate neighborhood; and**

The Board finds that the character of the immediate neighborhood consists of the Big Y/Palumbo's Plaza, a Starbucks, two very busy gas stations, and a strip mall that includes a Dunkin and a dry cleaner. Going slightly beyond the immediate neighbors, there is a car wash, Walmart, a restaurant, a Grossman's, another hotel, and multiple other commercial buildings. Accordingly, the removal of a driveway and the addition of two parking spaces will have no effect on the character of the immediate neighborhood. As such, the upgrade of the existing parking area and driveways has no adverse effect on the immediate neighborhood.

- (h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.**

The Board finds that the two of the main purposes of the Bylaw is to promote public safety and lessen congestion on the roads. As shown above and in the Traffic Impact Study, the Applicant's proposal does both. There will be no impact to the immediate neighborhood and the redevelopment is necessary to accommodate the proposed hotel which is a use allowed by right in the Highway Business District. Accordingly, the relief requested is completely compatible with the Zoning Bylaw and the Highway Business District.

FURTHER FINDINGS – VARIANCE

1. *That owing to circumstances relating to the soil conditions, shape or topography of land or structures, and especially affecting such land structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this by-law would involve substantial hardship, financial or otherwise to the petitioner or appellant;*

The Board did not find that this criterion had been met.

2. *That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this by-law.*

The Board did not find that this criterion had been met.

VARIANCE VOTE OF THE BOARD:

A motion was made by Board Member Murphy and seconded by Board Member Fitzgerald, that at the request of the Applicant the Board amend the application to allow no more than sixty-two feet (62') instead of the originally requested sixty-five feet (65') in height.

The vote was 5-0-0 in favor; therefore, the amendment to the application is hereby granted.

A motion was made by Board Member Murphy and seconded by Board Member Fitzgerald, that the Board grant a Variance from Section 6 (Dimensional Regulations): Table 6-B-1 (Table of Dimensional Regulations) of the Zoning Bylaw to allow a maximum building height of no more than sixty-two feet (62') in Five (5) stories where Forty-Five feet (45') and Four (4) stories are allowed all as shown on the plan entitled: "Site Plan, #990 Boston Providence Highway, Walpole/Sharon, Massachusetts" consisting of 10 Sheets dated July 1, 2019 drawn by Norwood Engineering Company, Inc., 1410 Route One, Norwood, MA 02062.

The vote was 3-2-0 in favor; therefore, the requested Variance is hereby denied.

SPECIAL PERMIT VOTE OF THE BOARD:

A motion was made by Board Member Murphy and seconded by Board Member Fitzgerald, that the Board grant a SPECIAL PERMIT under Section 9-3-A and 9-3-C of the Zoning Bylaw to allow alteration, expansion or extension of nonconforming parking within the setback, as shown on the plan entitled: "Site Plan, #990 Boston Providence Highway, Walpole/Sharon, Massachusetts" consisting of 10 Sheets dated July 1, 2019 drawn by Norwood Engineering Company, Inc., 1410 Route One, Norwood, MA 02062.

The vote was 4-1-0 in favor; therefore, the requested Special Permit is hereby granted.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk

cc: Town Clerk
Applicant (PDF)
Planning Board (PDF)
Building Inspector (PDF)

This decision was made on February 5, 2020 and filed with the Town Clerk on February 19, 2020.